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OFFICE OF THE SECRETARY



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December 21, 1998.

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The Hon. Magalie Roman Salas
Secretary
Federal Communications Commission
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Re: Council of Chief State School Officers' Petition to Reconsider
Fifth Order on Reconsideration and Fourth Report and Order in
CC Docket No. 96-45

Dear Secretary Salas:

This letter is submitted on behalf of the School District of Philadelphia and other school district and library system clients for whom our company provides E-rate consulting services. We are writing in support of the request of the Council of Chief State School Officers ("Council"), dated October 16, 1998, for partial reconsideration of the Commission's Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45 ("Fifth Order").

The portion of the Fifth Order in issue is paragraph 4. Paragraph 4 reads, in pertinent part, as follows:

...it is in the public interest to amend the exemption (in 54.511 of our rules) from the competitive bidding requirements, to allow schools and libraries that filed applications within the 75-day initial filing window to extend voluntarily, to a date no later than June 30, 1999, existing contracts that otherwise would terminate between December 31, 1998 and June 30, 1999.

In its Fifth Order, the Commission decided to add six months to the initial E-rate funding year to facilitate the E-rate program's change from a calendar to a school-year cycle. The Commission also decided to amend its rules to enable applicants who had Internet access and telecommunications contracts that expired before June 30, 1999 -- but not before December 31, 1998 -- to continue receiving discounts on the services covered by those contracts through the end of the extended funding year. Under the Commission's ruling, an applicant with a telecommunications contract that expired, for example, on December 30, 1998, would receive no discounts during the entire six-month transitional period, regardless of the applicant's economic condition or any of the circumstances surrounding the contract.

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In the interest of fairness to all members of the school and library community, the Council petitioned the Commission to expand the scope of the “voluntary extension” provision set forth in paragraph 4 of the Fifth Order. The Council’s petition, if granted, would enable applicants with E-rate eligible contracts expiring after the filing window closed, but before December 31, 1998, as well as applicants fortunate enough to have contracts expiring between December 31, 1998 and June 30, 1999, to participate in the E-rate program on equal footing.

The Council advised the Commission that numerous school districts across the nation would receive no E-rate support for telecommunications services or Internet access during the six-month transitional period if the Commission’s contract date ruling were left standing. The reason for this, the Council explained, was that those districts had based their contracting decisions entirely on E-rate program rules as they existed during the initial filing window. The Council believes, as do we, that a school district or a library system should not be penalized simply because it failed to conform its procurement policies to a set of yet-unwritten rules that no applicant could reasonably foresee.

The examples the Council cites in its petition show that the unintended effect of the Commission’s decision to allow only a narrow category of voluntary contract extensions will be to freeze out applicants unfairly from additional funding, simply because their contracts failed to satisfy the Commission’s arbitrary, calendar-related criteria. We know or have heard of numerous other examples of applicants who have contracts that expired well into what has now become, in effect, a post-filing window forfeiture period. One especially telling example involves the School District of Philadelphia. This example illustrates quite plainly why the Commission’s rule should be changed. It involves a ten-year telecommunications contract that unfortunately terminated three months too soon.

The School District of Philadelphia (“SDP”), with over 212,000 students, is the largest school district in the Commonwealth of Pennsylvania and the fifth largest school district in the nation. Its district-wide discount rate for E-rate purposes is 86%, pointing up the severe level of poverty that exists within the school district.

On October 6, 1978, long before the term “E-rate” was ever coined, SDP entered into a group of ten-year agreements with Bell Atlantic-Pennsylvania for Centrex/POTS service for most of the school district. A smaller group of contracts followed in April 1989, and the last contract was completed in June 1991.

Late last year and in early 1998, to put the relevant time period in perspective, the E-rate program was new, and E-rate policies, practices and procedures still were being established. At that time, the end of SDP’s ten-year telephone contract was still some nine months away and, more importantly, only a short three months from the start of the second E-rate funding year. With that in mind and considering the complexity and novelty of the regulatory and other contractual issues facing the school district, SDP adopted an E-rate objective for local telephone service that made perfect sense. SDP

would request E-rate discounts into October 1998 on its existing contract. Later in the year, it would file a Form 470 and, thereafter, negotiate a single, district-wide contract for local telephone service to begin in October 1998. During the next window period, which was then set to open July 1, SDP would file a Form 471, requesting a full year of 1999 funding year support. SDP was disappointed, of course, that the first 87 days of its new telephone contract would be ineligible for E-rate funding, but it was prepared to accept this limited sacrifice under the circumstances.

When the Commission issued its Fifth Order, however, school district officials were shocked to discover that SDP now suddenly stood to lose almost nine months worth of discounts on telecommunications services, as opposed to just 87 days. Ironically, the school district's own progressive contracting policy was to blame for this stunning loss. If, ten years before, SDP officials had elected not to negotiate a long-term contract for local telephone service, but instead had blindly continued to accept monthly, tariffed service, as many schools and libraries still do, the December 31, 1998 date would not be an issue, and SDP would be entitled to receive an additional nine months of E-rate discounts. Unfortunately, however, the cost to SDP of its progressive policy and the bad luck of not selecting December 31, 1998 as the date on which to terminate its multi-year service agreement, today turns out to be close to one million dollars.

In one of the Forms 471 that SDP filed with the Schools and Libraries Corporation ("SLC") during the initial filing window, SDP requested E-rate funding for local telephone service at the rate of \$150,328 per month. If the SLC approves SDP's application, and there is no reason to believe it will not, the Commission's rule on the "voluntary extension" of contracts will cost SDP \$901,968 in lost E-rate discounts. In SLC parlance, that is \$901,968 worth of Priority One funding that will not go to support instructional technology in one of the largest and most economically disadvantaged public school districts in the nation. In perspective, that is Priority One funding lost to an "86%" school district because a ten-year telecommunications contract expired 87 days short of a target date that does not appear to have any substantial legislative or regulatory relevance.

Another case of which we are aware involves a rural, "72%" school district with a long distance telephone contract that expired in August 1998. Because this contract expired before December 31, 1998, it fails to qualify for the additional six months of E-rate support. Shortly after the initial filing window closed, this school district negotiated a new, long distance contract effective through November 12, 1999. In doing so, it followed the E-rate program's competitive bidding requirements, filing both Forms 470 and 471. Because of this, the district would not need an exemption from the program's competitive bidding requirements to establish a contractual foundation for additional discounts during the January to June 1999 time frame. On the other hand, however, every applicant who now qualifies for such discounts either must take advantage of the Fifth Order's bidding exemption or, where tariffed services are concerned, elect not to sign a contract at all. We cannot believe that this unusual distortion of, and disregard for, the competitive process, which this example illustrates, is the outcome that the Commission intended.

Accordingly, we respectfully request that the Commission amend its rule regarding voluntary contract extensions to eliminate the inequity that is inherent in it. We urge the Commission to adopt a rule that will permit a wider, less arbitrary range of applicants to benefit from E-rate funding during the six-month transitional period. The Commission can accomplish this by allowing (1) all contracts that expired after the close of the initial 75-day filing window to be extended voluntarily through June 30, 1999, and (2) all contracts that were rebid pursuant to E-rate program requirements after the close of the initial 75-day filing window to be eligible for E-rate support through June 30, 1999. While this approach will no doubt place additional demands on available funding, the Commission could specify, for example, that it will support additional months of telecommunications services, across-the-board, at a uniform fraction of each applicant's approved monthly rate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Orin Heend", written in a cursive style.

Orin R. Heend
President